

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

Application by New York Telephone)
Company (d/b/a Bell Atlantic - New York),)
Bell Atlantic Communications, Inc.,)
NYNEX Long Distance Company,)
and Bell Atlantic Global Networks, Inc.,)
for Authorization To Provide In-Region,)
InterLATA Services in New York)

CC Docket No. 99-295

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OFFICE OF THE SECRETARY

**COMMENTS OF RCN TELECOM SERVICES, INC. UPON APPLICATION
BY BELL ATLANTIC - NEW YORK FOR AUTHORIZATION TO
PROVIDE IN-REGION, INTERLATA SERVICES IN NEW YORK**

RCN Telecom Services, Inc. ("RCN"), through undersigned counsel and pursuant to the Commission's *Public Notice* (dated September 29, 1999), hereby submits its comments upon the Application by Bell Atlantic - New York For Authorization to Provide In-region, InterLATA Services in New York in the above-captioned docket.

SUMMARY

RCN submits these comments in order to discuss four points. First, RCN clarifies the status of its efforts to access house and riser cable in multi-dwelling units. Bell Atlantic - New York ("BA-NY") lacks the ability to provision house and riser cable in a commercially reasonable manner and in commercially reasonable quantities. Nevertheless, RCN and BA-NY are negotiating an agreement under which RCN would assume the task of provisioning BA-NY's house and riser cable. RCN believes that this agreement will mitigate the deficiencies of BA-NY's provisioning process. However, until the agreement is in place and working properly, there is no evidence before this Commission that BA-NY provisions house and riser cable in a

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manner that gives its competitors a meaningful opportunity to compete.

Second, RCN sets forth legal argument opposing the service restrictions that BA-NY has placed upon the expanded extended link ("EEL"). BA-NY requires purchasers of DS1 and higher capacity EELs to use them to offer primarily local exchange service and associated switched exchange access. This restriction is contrary to the Commission's rules, 47 C.F.R. § 51.309(a) and (b), which prohibit incumbent local exchange carriers from limiting the uses of unbundled network elements.

Third, RCN opposes BA-NY's practice of requiring two trouble tickets to be submitted when a loop-transport combination, other than an EEL, has service trouble. As argued below, BA-NY should permit CLECs to submit a single trouble report for such loop-transport combinations.

Fourth, RCN calls the Commission's attention to BA-NY's practice of refusing to allow customers with RCN-issued telephone numbers to take advantage of number portability when returning to BA-NY. BA-NY's practice in this regard could lead consumers to view RCN-issued telephone numbers as somehow inferior to those issued by BA-NY. To comply with the Competitive Checklist, BA-NY must allow these customers to retain their RCN-issued telephone numbers when switching to BA-NY's local service.

INTRODUCTION

RCN is a facilities-based competitive local exchange carrier serving residential and business customers in the state of New York. RCN has constructed a full-service network to

residences and businesses throughout the New York City calling area. RCN is committed to being the first alternative to BA-NY for the residential customer in New York as well as a vigorous competitor for business customers.

RCN's parent company, RCN Corporation, is the nation's first and largest single-source, facilities-based provider of competitive telecommunications services to the residential market. The company is currently providing local and long distance telephone, cable television and Internet services in several markets from Boston to Washington, D.C. RCN's parent company also recently announced plans to expand its target market to include California's San Francisco to San Diego corridor.

ARGUMENT

I. BA-NY'S PROVISIONING PROCESSES FOR HOUSE AND RISER CABLE ARE DEFICIENT AND BA-NY IS STILL IN THE FORMATIVE STAGES OF NEGOTIATING AND IMPLEMENTING AN AGREEMENT TO PROVIDE RCN WITH DIRECT ACCESS TO HOUSE AND RISER CABLE

RCN has sought to access BA-NY's house and riser cable ("H&R")¹ in multi-dwelling units ("MDUs") in New York City in order to serve residential customers. Affidavit of Alan Thompson, NYPSC Case 97-C-0271, at ¶ 5 (dated April 27, 1999). By way of background,

¹ H&R falls under items two and four of the Competitive Checklist. 47 U.S.C. § 271(c)(2)(b)(ii) & (iv) (relating to access to unbundled network elements and unbundled loops). H&R is part of the loop which travels to the customer's premises and thus falls under 47 U.S.C. § 271(c)(2)(b)(iv). H&R also falls under 47 U.S.C. § 271(c)(2)(b)(ii), which deals with among other things an RBOC's ability to provide combinations of network elements. H&R is a network element (because it is essentially the network interface device) that RCN seeks to combine with its loop plant. *See FCC Promotes Local Telecommunications Competition*, Press Release (dated September 15, 1999) (describing forthcoming Commission order that defines the network interface device as an unbundled network element under 47 U.S.C. § 251(c)(3)).

H&R is the portion of the loop that travels from the network interface device to the customer's premises.² Carriers that bring their loop plant to an MDU may reach individual customers by connecting to the H&R serving the building's apartments.³ BA-NY offers H&R on a wholesale basis via its PSC Tariff No. 916. Prior to ordering H&R, a CLEC must have brought its loop plant to the telephone room in which BA-NY's H&R terminates.⁴ Although BA-NY typically provisions H&R in seven to ten business days when the process works properly — which is two to three times as long as it takes to provision retail telephone service — BA-NY does not provision H&R correctly in the majority of cases,⁵ forcing RCN to file a trouble ticket. *See* Affidavit of Edward Kuczma, NYPSC Case 97-C-0271, at ¶ 4, 6 (dated July 26, 1999). The process is completely unworkable for large orders, which explains why BA-NY has deployed special project teams on a building-by-building basis to handle RCN's relatively modest demand for 800 H&R arrangements over the last several months. *Id.*, at ¶¶ 8-9.

² *See Formal Proposal: New York Telephone Company d/b/a Bell Atlantic-New York and RCN Telecom Services of New York, Inc. Should Provide Each Other Equal Access to House and Riser Cable*, at 1 (filed with NYPSC in Case 97-C-0271, dated September 3, 1999) ("*Formal House and Riser Proposal*").

³ Facilities-based carriers seeking to use their own loop plant to serve business customers similarly would access the house and riser cable in commercial buildings.

⁴ CLECs are supposed to mount and hard-wire a neutral block between their loop plant and the H&R cabinet.

⁵ The cause of these troubles appears to be BA-NY's failure to train its technicians to provision H&R properly. Kuczma Affidavit, at ¶ 4.

The problem with BA-NY's H&R provisioning process is that it must dispatch a technician for every H&R order. Thompson Affidavit, at ¶ 6. There is a bottleneck because BA-NY only has so many technicians that it can dispatch at a given time. Declaration of Alan Thompson, at ¶ 7 (attached hereto as Exhibit A); Thompson Affidavit, at ¶ 6. Thus, while BA-NY could handle about one hundred H&R orders per week, it could not scale its operation to handle the volumes that "full-blown competition would present." See Kuczma Affidavit, at ¶ 7.

RCN has proposed a partial solution to this problem: RCN itself would perform the task of provisioning BA-NY's H&R at each MDU. See *Formal House and Riser Proposal*. In other words, RCN's technicians would perform the work of running a cross connect between BA-NY's H&R and RCN's loop plant. *Id.*, at 1. RCN and BA-NY have agreed in principle to allow RCN to have direct access to H&R. The parties currently are negotiating a written contract toward that end.⁶

While RCN is optimistic that the parties' contract eventually will ameliorate the H&R bottleneck, it is the bottleneck, not the contract, that is currently in place. Neither RCN, nor the New York Commission, nor BA-NY can state definitively whether the contract will alleviate the bottleneck. For that reason, RCN does not recommend that the Commission approve BA-NY's Section 271 application. Rather, the Commission should wait until BA-NY can present specific evidence that the contract is in place and working as it should.

⁶ As of the date of these comments, the parties had not signed a contract.

II. BA-NY HAS PLACED SERVICE RESTRICTIONS ON THE EEL THAT ARE CONTRARY TO THE COMMISSION'S RULES

Pursuant to its Pre-Filing Statement, BA-NY offers an Expanded Extended Link ("EEL"), which is a combination of a loop, interoffice transport, and multiplexing, where necessary. BA-NY's EEL offering is designed to comply with Checklist Item Two, which requires Section 271 applicants to make combinations of network elements available to requesting telecommunications carriers.⁷ BA-NY restricts the use of the EEL to local exchange service and associated switched exchange access. BA-NY PSC Tariff No. 916, § 5.14.2.12. The New York Commission has interpreted this restriction to mean that purchasers of DS1 and higher capacity EELs may not offer data services at all and may offer interLATA/special access services only on less than 50% of the channels of the EEL. *Order Denying Rehearing and Clarifying Primarily Local Traffic Standard*, NYPSC Cases 98-C-0690, 95-C-0657, 94-C-0095, & 91-C-1174, at 11 (dated August 10, 1999). RCN opposed these service restrictions in comments filed November 12, 1998.⁸ In those comments, RCN argued as follows:

Valid FCC rules prohibit BA-NY from restricting the use of the EEL, which is a combination of unbundled network elements:

⁷ See 47 U.S.C. § 271(c)(2)(B)(ii); *Application of BellSouth Corporation, et Al. Pursuant to Section 271 of The Communications Act of 1934, as Amended, to Provide In-region, InterLATA Services in South Carolina*, Memorandum Opinion and Order, CC Docket No. 97-208, FCC 97-418, 13 FCC Rcd 539, § 182 (rel. December 24, 1997) (holding that 47 U.S.C. § 271(c)(2)(B)(ii) incorporates the requirement from 47 U.S.C. § 251(c)(3) that incumbent LECs provide network elements in a manner that allows requesting carriers to combine them).

⁸ See *Comments of RCN Telecom Services of New York, Inc. Regarding Proposed Restrictions for Bell Atlantic - New York's Expanded Extended Link*.

An incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.

47 C.F.R. § 51.309(a). Under federal law, restrictions upon unbundled network elements simply are not permissible. In fact, the FCC anticipated the very argument that BA-NY makes here (*i.e.*, that CLECs would use unbundled network elements to bypass an incumbent's provision of exchange access services) when it ruled that:

A telecommunications carrier purchasing access to an unbundled network element may use such network element to provide exchange access services to itself in order to provide interexchange services to subscribers.

47 C.F.R. § 51.309(b).⁹ Thus, CLECs wishing to provide exchange access to their customers in a form that does not comply with BA-NY's proposed restriction have a right to do so under federal law.

In response to RCN's arguments, the New York Commission stated that, in light of the Supreme Court's ruling in *AT&T v. Iowa Utilities Bd.*, 119 S.Ct. 721 (1999), it was unclear whether the

⁹ In the *Local Competition Order*, the FCC reinforced this point when it found that:

When interexchange carriers purchase unbundled elements from incumbents, they are not purchasing exchange access "services." They are purchasing a different product, and that product is the right to exclusive access or use of an entire element.

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98 & 95-185, First Report and Order, 11 FCC Rcd 15499, ¶ 358 (rel. August 8, 1996) ("*Local Competition Order*"), *partially vacated on other grounds, Iowa Utilities Bd. v. FCC*, 120 F.3d 753, 819 n.39 (8th Cir. 1998), *cert. granted, AT&T Corp. v. Iowa Utilities Bd.*, 118 S.Ct. 879 (1998).

constituents of an EEL were network elements to which this Commission's proscription against service restrictions applied.¹⁰

That issue is no longer unclear. According to its recent press release, the Commission soon will release an order stating that at least loops and interoffice transport,¹¹ the principal components of the EEL, are unbundled network elements under 47 U.S.C. § 251(c)(3). *See FCC Promotes Local Telecommunications Competition*. Since loops and interoffice transport are unbundled network elements, BA-NY cannot restrict their use without violating 47 C.F.R. § 51.309.¹² Thus, BA-NY has failed to meet Checklist Item Two, unless it withdraws the service restrictions that currently limit EEL users to providing local exchange service and associated switched exchange access.

¹⁰ See *Order Directing Tariff Revisions*, Cases 98-C-0690, 95-C-0657, 94-C-0095 & 91-C-1174, at 9 (dated March 24, 1999) ("Pending the remand of 47 C.F.R. § 51.319, we reject arguments advanced by some CLECs that the uses for which we are making the EEL available violate the Act. In the event that the federal rules are modified to mandate unrestricted access to EEL combinations, any tariff criteria for access to EELs at UNE prices will be re-examined."); *Order Denying Rehearing and Clarifying Primarily Local Traffic Standard*, at 10 ("Should the FCC decide that EEL components are network elements that must be made available to CLECs without restriction, we have already stated that the EEL tariff criteria would be re-examined.").

¹¹ The press release did not clarify the status of multiplexing.

¹² Because 47 U.S.C. § 271(c)(2)(B)(ii) — the portion of the Checklist that addresses combinations of network elements such as the EEL — incorporates 47 U.S.C. § 251(c)(3), it also incorporates 47 C.F.R. § 51.309 which the Commission promulgated under 47 U.S.C. § 251(c)(3).

III. BA-NY DOES NOT USE COMMERCIALY REASONABLE MAINTENANCE PROCEDURES IN SERVICING COMBINATIONS OF INTEROFFICE TRANSPORT AND LOOPS

Before BA-NY made the EEL available, RCN purchased a number of loop/interoffice transport combinations out of PSC Tariff Nos. 900 and 916, which BA-NY made available pursuant to this Commission's *Local Competition Order*¹³ and subsequently sought to withdraw after the ruling of the Eighth Circuit Court of Appeals in *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (1997), *reversed*, *AT&T v. Iowa Utilities Bd.*, 119 S.Ct. 721 (1999). See Thompson Declaration, at ¶ 8. As RCN has noted in affidavits filed with the New York Commission, these loop-transport combinations have experienced considerable service difficulties. See Affidavit of Terry Roberts, NYPSC Case 97-C-0271, at ¶¶ 3-6 (dated August 3, 1999). The Declaration of Alan Thompson affirms that these service troubles have persisted to this day. Thompson Declaration, at ¶ 8. Despite intending to file the instant Section 271 application, BA-NY has not acted to prevent service troubles from recurring on RCN's loop-transport combinations.

In addition, BA-NY mismanages the process of maintaining and repairing RCN's loop-transport combinations. As Mr. Thompson explains in his attached declaration (at ¶ 8), BA-NY does not permit CLECs to submit a single trouble report when a particular loop-transport combination malfunctions. Instead, RCN must submit separate trouble reports for the loop and transport elements of the combination. *Id.* Internally, BA-NY does not treat the two trouble reports as related (as they inherently are). *Id.* Thus, much confusion arises within BA-NY's

¹³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 F.C.C.R. 15499 (1996) ("*Local Competition Order*").

maintenance and repair bureau as it tries to understand how to repair a unified facility (the loop-transport combination) that it has been falsely lead to believe is two separate facilities (a loop and a piece of transport). *Id.* While BA-NY straightens out the issue, RCN's customers languish without telephone service. *Id.* Plainly, BA-NY should allow RCN to submit a single trouble report for loop-transport combinations. *Id.*

BA-NY ought to re-think its scheme for maintaining and repairing loop-transport combinations to prevent the pervasive service troubles from occurring in the first place and to manage them more efficiently when they do occur.

IV. BA-NY WILL NOT PROVIDE NUMBER PORTABILITY TO CUSTOMERS WITH RCN-ISSUED TELEPHONE NUMBERS

In the last few months, BA-NY has refused to allow RCN's customers to switch to BA-NY and keep an RCN-issued telephone number. *See* Thompson Declaration, at ¶ 9. BA-NY requires these customers to adopt BA-NY issued telephone numbers before it will provide them service. *Id.* BA-NY's policy violates the Commission's number portability rules, which require BA-NY to provide number portability and do not provide an exception for customers originally served by another carrier.¹⁴ BA-NY's policy is a vehicle for discrimination because it suggests that RCN-issued telephone numbers are somehow inferior to those issued by BA-NY. The policy also would discourage BA-NY customers from switching to RCN and purchasing new lines from RCN because the telephone numbers of those new lines would not be portable.

¹⁴ *See* 47 C.F.R. § 52.27 (LECs must provide transitional measures for number portability, until such time as they implement a long-term database method for number portability in that area).

Before the Commission can approve BA-NY's Section 271 application, it must verify that BA-NY actually obeys the number portability rules. *See* 47 U.S.C. § 271(c)(2)(B)(xi).

CONCLUSION

For the foregoing reasons, the Commission should reject BA-NY's Section 271 application.

Respectfully submitted,



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Counsel for RCN Telecom Services, Inc.

Dated: October 19, 1999

Exhibit A

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Petition of New York Telephone Company for Approval)	
of Its Statement of Generally Available Terms and)	
Conditions Pursuant to Section 252 of the)	
Telecommunications Act of 1996 and Draft Filing of)	Case 97-C-0271
Petition for InterLATA Entry Pursuant to Section 271)	
of the Telecommunications Act of 1996 to Provide)	
In-Region, InterLATA Services in the State of New York)	

DECLARATION OF ALAN THOMPSON

I, Alan Thompson, first being duly sworn, depose and state as follows:

1. I am Implementation Project Manager for RCN Telecom Services and other RCN affiliates ("RCN"). My office is at 105 Carnegie Center, Princeton, New Jersey, 08540. At RCN, my responsibilities include implementation of access to unbundled network elements, as well as general interconnection issues.
2. I joined RCN in April of 1997. Before coming to RCN, I worked for New York Telephone Company (now known as Bell Atlantic-New York ("BA-NY")) for twenty-six years. I worked in the following areas: POTS installation and repair, POTS and coin line testing, private line design, the divestiture task force, and IXC private line provisioning. I have extensive experience, on the side of the incumbent, in working with new entrants. I worked on a team specializing in POT bay inventory, and I was a part of a wholesale markets team for unbundled network element provisioning support. I implemented access to unbundled network elements for Teleport, MFS, Brooks Fiber, Frontier Communications, and AT&T. At RCN, I have worked to implement access to unbundled network elements and RCN's interconnection with BA-NY's house and riser cable. In short, I have considerable experience with interconnection issues.

3. I obtained my A.A.S degree in biological technology from New York State University at Farmingdale, New York in 1965. I attended Centenary College from 1965 to 1967, when I was drafted into the United States Navy. In the Navy, I received technical training in advanced electricity and electronics as well as the training of a sonar technician. Before I left the Navy in 1971, I served as a nuclear weapons handler, with a top secret clearance, on a team that deployed Anti-Submarine Rockets.

4. I previously filed an affidavit with the New York Public Service Commission regarding BA-NY's compliance with Section 271 of the Act. *See* Affidavit of Alan Thompson (dated April 27, 1999). That affidavit addressed issues related to house and riser cable provisioning and problems that RCN had experienced with unbundled loop and interoffice transport combinations.

House and Riser Cable

5. RCN is a facilities-based carrier serving mostly residential customers in New York City. RCN has sought to connect its loop plant to the BA-NY house and riser cable that services individual customers in multi-dwelling units. BA-NY offers access to its house and riser facilities to CLECs pursuant to its NY PSC No. 916 Tariff.

6. In my April 27, 1999 affidavit, I identified numerous problems with BA-NY's process for provisioning house and riser cable. Mr. Edward Kuczma, in his affidavit filed with the New York Commission on July 26, 1999, similarly detailed the pervasive problems with BA-NY's process for provisioning house and riser cable. While I am here to report that BA-NY's

provisioning process has not improved to any noticeable degree, I am also able to report that BA-NY and RCN are in the process of negotiating an trial arrangement by which RCN itself would provision BA-NY's house and riser cable. RCN believes that that trial arrangement will alleviate many of the problems that RCN currently experiences with BA-NY's provisioning process. The parties intend to conclude negotiations by the end of October, 1999. RCN should be able to provision BA-NY's house and riser cable using RCN technicians starting in November of this year.

7. While we at RCN are excited about the prospects for the trial arrangement, I wish to pose two caveats. First, since the trial has not yet begun, there is no telling whether it will be successful. We hope that it will be, but there presently is no evidence available to confirm or deny its success. Second, if the trial does not work and purchasers of house and riser must rely upon BA-NY's slow and undependable provisioning processes, facilities-based competition will be harmed. Simply put, BA-NY's limited pool of technicians acts as a bottleneck upon the number of house and riser cable orders that BA-NY can process in a given period of time. If competitors had to rely on BA-NY's provisioning process, as opposed to being able to provision BA-NY's house and riser cable themselves, they would not have a meaningful opportunity to compete against BA-NY.

Loop/Transport Combinations

8. RCN uses unbundled loop and interoffice transport combinations, which it ordered out of BA-NY's PSC Tariff Nos. 916 and 900 prior to the availability of the Expanded

Extended Link, to bring some buildings in New York City onto its local service network. Some of these loop/transport combinations have experienced service problems in the recent past. In attempting to send BA-NY trouble tickets for these loop/transport arrangements, RCN has discovered that BA-NY requires separate trouble tickets for each component of the combination (*i.e.*, a separate ticket for the loop portion as well as the transport portion). Unfortunately, BA-NY internally does not treat these trouble tickets as related. Thus, troubles with loop/transport combinations, and thus service outages, have lingered because BA-NY becomes confused by the existence of the two trouble tickets which RCN places at BA-NY's request. BA-NY needs to bring sanity to this process by allowing RCN to place one trouble ticket for each loop/transport combination.

Number Portability

9. BA-NY representatives have informed me that BA-NY will no longer allow RCN customers who have RCN-issued telephone numbers to keep their numbers if they return to BA-NY. I do not understand BA-NY's position. In Massachusetts, Bell Atlantic has allowed numerous RCN customers to keep their RCN-issued telephone numbers when switching back to Bell Atlantic's local service. By not doing so in New York, BA-NY suggests to customers that there is something wrong with an RCN-issued telephone number, which I know are no better or worse than BA-NY's telephone numbers.

Pursuant to 47 C.F.R. § 1.16, I declare under penalty of perjury that the foregoing is true and correct. Executed on: October 18, 1999.

Alan Thompson¹⁵

¹⁵ The original signed signature page will be filed in hardcopy with the Secretary of the Commission as soon as it is received in Washington, D.C.

CERTIFICATE OF SERVICE

I, T. Paul Taylor, certify that on October 19, 1999, I served a copy of the foregoing Comments of RCN Telecom Services, Inc. Upon Application by Bell Atlantic - New York for Authorization to Provide In-Region, InterLATA Services in New York; CC Docket No. 99-295 upon the following individuals via the indicated methods:

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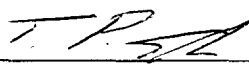
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